(2) IMPROVEMENTS.—For purposes of an appraisal conducted under paragraph (1), any improvements on the permitted cabin land made by a permit holder shall not be included in the appraised value of the land.

(3) PROCEEDS FROM THE SALE OF LAND BY THE BOARD.—If the Board sells a parcel of permitted cabin land conveyed under subsection (a)(1)(B), the Board shall pay to the Secretary the amount of any proceeds of the sale that exceed the costs of preparing the sale by the Board.

(d) AVAILABILITY OF FUNDS TO THE SECRETARY.—Any amounts paid to the Secretary for land conveyed by the Secretary under this Act shall be made available to the Secretary, without further appropriation, for activities relating to the operation of the Jamestown Dam and Reservoir.

SEC. 3. CONVEYANCE OF GAME AND FISH HEADQUARTERS TO THE STATE.

(a) CONVEYANCE OF GAME AND FISH HEADQUARTERS.—Not later than 5 years after the date of enactment of this Act, the Secretary shall convey to the State all right, title, and interest of the United States in and to the game and fish headquarters, on the condition that the game and fish headquarters continue to be used as a game and fish headquarters or substantially similar purposes.

(b) REVERSION.—If land conveyed under subsection (a) is used in a manner that is inconsistent with the requirements described in that subsection, the land shall, at the discretion of the Secretary, revert to the United States.

SEC. 4. RESERVATIONS, EASEMENTS, AND OTHER OUTSTANDING RIGHTS.

(a) IN GENERAL.—Each conveyance to the Board or the State pursuant to this Act shall be made subject to—

(1) valid existing rights;

(2) operational requirements of the Pick-Sloan Missouri River Basin Program, as authorized by section 9 of the Act of December 22, 1944 (commonly known as the ''Flood Control Act of 1944'') (58 Stat. 891, chapter 665), including the Jamestown Reservoir;

(3) any flowage easement reserved by the United States to allow full operation of the Jamestown Reservoir for authorized purposes;

(4) reservations described in the Management Agreement;

(5) oil, gas, and other mineral rights reserved of record, as of the date of enactment of this Act, by, or in favor of, the United States or a third party;

(6) any permit, license, lease, right-of-use, flowage easement, or right-of-way of record in, on, over, or across the applicable property or Federal land, whether owned by the United States or a third party, as of the date of enactment of this Act;

(7) a deed restriction that prohibits building any new permanent structure on property below an elevation of 1,454 feet; and

(8) the granting of applicable easements for—

(A) vehicular access to the property; and

(B) access to, and use of, all docks, boathouses, ramps, retaining walls, and other improvements for which access is provided in the permit for use of the property as of the date of enactment of this Act.

(b) LIABILITY; TAKING.—

(1) LIABILITY.—The United States shall not be liable for flood damage to a property subject to a permit, the Board, or the State, or for damages arising out of any act, omission, or occurrence relating to a permit holder, the Board, or the State, other than for damages caused by an act or omission of the United States or an employee, agent, or contractor of the United States before the date of enactment of this Act.

(2) TAKING.—Any temporary flooding or flood damage to the property of a permit holder, the Board, or the State, shall not be considered to be a taking by the United States.

SEC. 5. INTERIM REQUIREMENTS.

During the period beginning on the date of enactment of this Act and ending on the date of conveyance of a property or parcel of land under this Act, the provisions of the Management Agreement that are applicable to the property or land, or to leases between the State and the Secretary, and any applicable permits, shall remain in force and effect.

Mr. MCCONNELL. Mr. President, I further ask unanimous consent that the committee-reported substitute amendment be agreed to and that the bill, as amended, be considered read a third time and passed and the motion to reconsider be considered made and laid upon the table with no intervening action or debate.

The committee-reported amendment in the nature of a substitute was agreed to.

The bill (S. 2074), as amended, was ordered to be engrossed for a third reading, was read the third time, and passed.

ORDERS FOR FRIDAY, OCTOBER 5, 2018

Mr. MCCONNELL. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 9:30 a.m., Friday, October 5; further, that following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved for their use later in the day, and morning business be closed; finally, that following leader remarks, the Senate proceed to executive session to resume consideration of the Kavanaugh nomination.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER FOR ADJOURNMENT

Mr. MCCONNELL. Mr. President, if there is no further business to come before the Senate, I ask that it stand adjourned following the remarks of Senators MERKLEY, BENNET, and PORTMAN.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Oregon.

NOMINATION OF BRETT KAVANAUGH

Mr. MERKLEY. Mr. President, moments ago, I was outside at a rally on the lawn of the Capitol, looking at the Supreme Court of the United States of America. When you look at that beautiful building, you see the phrase ''equal justice under law'' above the big, beautiful doors of entry—equal justice under law. That is the concept behind the Supreme Court. Every other court can make decisions, but they can be appealed—the final determination, balancing the parts of the Constitution against each other, understanding and exercising the fundamental vision contained in this beautiful ''We the People'' document. That is what those nine Justices are all about.

For an individual to become a Justice, it takes two steps. The first is, it is considered by the President as to whom to nominate. Having nominated, it comes over to the Senate. This is the confirmation process.

The Founders, when they wrote the Constitution, wrestled with, how do you appoint individuals to these key positions? They said: Well, we could give the power to the assembly, so that would be a check on the executive or a check on the judiciary getting out of control. But they worried that Senators might trade favors: You put my friend in this position; I will put your friend in that position.

They said that the nominating power needed to rest with one individual—that being, of course, the President of the United States of America.

Then they said: What happens if a President goes off track? Alexander Hamilton spoke to this and called it favoritism—favoritism of a variety of types. What if the President goes off track and starts nominating friends when they are qualified for particular positions? What if he only nominates people from his home State, ignoring the qualities of many people who might be better qualified? What if there comes a situation where perhaps favors are done for the President in exchange for a position? The Founders said that there needs to be a check; that is, the Senate confirmation process. It is a pretty good design. I can't think of any one better.

Essentially, the confirmation process is like a job interview: Is this individual fit to serve in the executive branch? Is this person fit to be a judge? Is this person fit to be a Justice of the Supreme Court of the United States of America? That term, ''fit,'' is the term that Alexander Hamilton used when he was writing about the fundamental goal of the Founders to decide if an individual by experience and character was fit or unfit.

That is our job here. Throughout our history, it is a clear separation of powers. The Senate cannot intervene in terms of whom the President nominates, and the President cannot intervene in terms of the review process of that nominee.

Now we have something that has happened in an extraordinary fashion. It has never happened in the United States before, as far as we are aware; that is, the President of the United States, President Trump, has violated that separation of powers, and he has done so in three fundamental ways.

After nominating, he did not leave the Senate to review the record. He instead had his team call up Senators who lead the Judiciary Committee and say: Don't let the Senate get their hands on any of the records for the 3 years in which the nominee served as Staff Secretary.

That is a direct intervention, a violation of the separation of powers. When I say ''he,'' I am referring to his team. That intervention was unacceptable.

Then the Senate requested the records for the time he served on the White House Counsel. In this case, the President assigned an individual and gave him a stamp labeled ''Presidential

privilege,'' and that individual proceeded to stamp not 10 pages of documents, not 100, not 1,000, not 10,000, but 100,000 pages of relevant information were stamped ''Presidential privilege'' and were not delivered to the Senate. The President of the United States, instead of responding to the Senate's request for records, proceeded to exercise what he referred to as Presidential privilege or what we know to be Executive privilege and prevented the Senate from getting those documents.

Why did that happen? We got some of the documents that made it through that censorship process but not all of them. From the documents we did receive, we found some information. We found out that when he served, he had been very involved in several nominations, discussions on nominations, even though he had indicated he had not played much of a role. We found out that he was involved in the conversation on torture, even though he had said he had not been involved. We found out that he had directly received documents stolen from the Democrats, even though he said he had not received those documents. That is just in the documents received. What is in the 100,000 documents the President marked ''Presidential privilege'' so we could not get them? What is being hidden in those documents?

This violation of separation of powers—a violation that has never occurred in this manner to this degree, to this extent or anything close to it as far as any researcher has been able to ascertain—is unacceptable. The Senate must stand up for its right to be able to review the record of nominees.

Sure, some of my colleagues are pretty happy that these documents got blocked because they don't want to know what is in them because they have already made up their minds. But reverse the situation. Consider that maybe a different President is in place, proposing a judge of a different judicial philosophy.

Do we really want to compromise the fundamental rights of the Senate, their responsibilities of the Senate of advice and consent? We do not. It is wrong. Each of us, every one of us, took an oath of office to uphold the Constitution. Now, that Constitution gives each of us, every one of us, the responsibility to review the record of nominees and decide if they are fit or unfit, and none of us can do that if we don't have those records.

So let's stand up together and tell the President to deliver those documents. Well, now, you might ask: Isn't there some justification for this Presidential privilege? Consider this: These are records that occurred under President Bush, but it is not President Bush asserting privilege, it is President Trump. How could his—that is, President Trump's—conversations be compromised by records from a previous administration? Doesn't this sound suspicious?

The only reason anyone can think of is not that they compromise confidential information about the Trump administration but that simply they have information that would not look good in regard to our review of Judge Kavanaugh's record.

So when you have this situation, this abuse of power, we sometimes turn to the courts to say stop that abuse, and that is what I have done. I filed suit and said: Stop this abuse of power by the President stepping in and blocking the Senate from seeing those 100,000 documents, for which no justification has been provided.

It isn't that the President said: Well, on this page there is this type of sensitive information and that is protected because it affects my administration. No, no justification. So that alone tells you this Senate should never confirm this individual because we have not had the opportunity to review his record. The President is hiding these documents. He does not want us to see them because it probably has a lot of information unbecoming to this nominee. You don't hear the nominee saying: No. Deliver the records. I want the Senate to know everything about me. No, the nominee is not interested in us being able to actually see his judicial views or his character in that context. So this is one reason he should be rejected.

How about this. Should anyone serve on the Supreme Court, that beautiful place where we consider equal justice under the law, who has repeatedly lied to the U.S. Senate during his confirmation hearings? He lied in 2006 time after time. My colleagues who served in 2006—I did not—have pointed this out in detail. He lied on key issues, key issues related to the documents I was referring to.

Then we had his performance in the Senate just last week where he proceeded to tell all kinds of whoppers. The press has laid them out. Some articles talk about 20-plus whoppers he has told, and by ''whoppers,'' I mean lies. I mean deceptions. I mean inaccuracies. I mean things he knew not to be true. That is unacceptable, to put any individual on the Court who cannot be truthful when questioned before Congress.

Then we have the fact that he has this record of engaging in behavior abusive to women. Now, it took a lot of courage for Dr. Ford to come forward and tell her experiences in high school, and it took a lot of courage for Debbie Ramirez to come forward and talk about her experiences in her freshman year. She shared how Mr. Kavanaugh—Judge Kavanaugh—had directly engaged in massively inappropriate sexual behavior.

When women come forward to share these experiences, we need to treat them with respect; we need to treat them with dignity; we need to hear them; we need to understand their pain, but what did the Senators on the Senate Judiciary Committee majority do? They hired a prosecutor in order to treat her as a criminal. Yes, the 11 Republican men hired a prosecutor to treat Dr. Ford as a criminal when she appeared before the committee.

Now, she asked for an FBI investigation. The committee didn't want to give it to her. The leadership of the committee didn't want to give it to her, and I praise my colleague from Arizona who said it is so important to investigate the credibility of her story, to talk to those who have additional information. She asked for that. She invited that. She wanted that.

She provided a list of eight individuals whom, if you want to corroborate her story, these are the people you should talk to.

So the President, at the request of my good friend from Arizona, said: Yes, we will reopen the background investigation, the FBI investigation, but the President produced a scoping document that says whom the FBI can talk to. So of those eight women, those eight women who are on Dr. Ford's list, you would expect, if the goal was to explore her experience as she presented it, the FBI would be authorized by the President to speak to all eight. To my colleagues, have you paid attention to how many individuals the FBI was allowed by President Trump to talk to who were on that list—Dr. Ford's list? The answer is zero.

So any colleague in this Chamber who says that was fair treatment of Dr. Ford I will contend is absolutely wrong because Dr. Ford presented individuals who had relevant information, and the President's scoping document prevented the FBI from talking to them.

Now let's talk about Debbie Ramirez. She is there during Judge Kavanaugh's freshman year at Yale, in the dorm, and he behaves in a totally inappropriate manner, according to the information she relayed about excessive drinking, followed by this individual, this nominee, exposing himself to her and laughing about it.

She provided a list of 20 individuals who have corroborating information about that experience—20. So, of course, if the FBI was going to reopen the background investigation and it was going to be an investigation with any form of integrity, any form of legitimacy, any form of fairness, the FBI would be allowed to talk to those 20 people.

How many of those 20 people did the President, in his scoping document, allow the FBI to talk to? None. Zero. Not a single one. That, again, is not fairness to the individual who came forward with her experience.

Now, why is it that the President didn't want the FBI to actually talk to these individuals? Well, let's discuss one of them. One of them lived in the suite, lived right there in the same cluster of bedrooms with a common area as did Mr. Kavanaugh that freshman year, and he heard about this story in real time. He heard about it and he remembered it and he thought it was outrageous that Mr. Kavanaugh had behaved in this fashion.

Now, he remembered it so clearly that when he was in a discussion with his roommate in his first year in graduate school, he shared that story with his roommate years and years and years before Kavanaugh was ever nominated to a judicial position. So here you have a suitemate who heard the story of what was done by Mr. Kavanaugh to Debbie Ramirez, who relayed that story to another student in his first year of graduate school and who went to the FBI and said: Come and talk to me because I can tell you she is telling the truth. I may not have witnessed it, but I heard about it after it happened, and I am not making it up now because I told somebody about it, and they are willing to come forward and talk to you.

So it goes to the FBI. Could the FBI talk to him? No, they couldn't because the President of the United States prohibited the FBI from talking to anyone who had real information about the two experiences those two women brought forward. That is just beyond wrong.

Think about how much worse this body is treating these two women than the Senate treated Anita Hill in 1991. Think about that comparison. You would think in the nearly three decades since we would have improved, 27 years—but have we?

With Anita Hill, the President immediately reopened the FBI investigation of his own volition, wanting to get a full background check of the issue. The committee held hearings over multiple days, had multiple people come forward who had corroborating information. They heard them out.

How many of those 28 individuals have been given an opportunity to come before the Judiciary Committee to share their experience? Not a one. The leadership of the Judiciary Committee has blocked all of them—has not invited one of them to share their story. The President blocked the FBI from talking to them. The leadership at Judiciary blocked the Judiciary Committee of this body from hearing them out.

This is perhaps the worst example of injustice we could envision in this body, and I would like to call it an esteemed body, but how can I call it that when my colleagues are treating these women in such a horrific fashion?

Should an individual serve on the Supreme Court based on this job interview that we are conducting? Would you hire this individual into your company, into a position of trust, after the testimony of these two women? Wouldn't you say: If I am even giving a thought to hiring the individual, I will check out these stories, not block these women from being able to have the corroborating information shared with the Senate, not block the FBI from being able to talk to them? No. This is a failure. We cannot allow this to stand. We have a responsibility, particularly more with the Supreme Court than any other organization, to exercise our advice and consent through a responsible process, a process of integrity, of fairness, of decency, of transparency, none of which is happening at this point.

So we have deep differences over this man's judicial philosophy, but I know that if he is rejected, then the President will propose someone of a similar judicial philosophy. So my colleagues who support that philosophy can be assured they will have a chance to put another person in who hasn't lied to the Senate, another person who doesn't have a record of abuse toward women.

I heard some interviews this evening of some of my colleagues saying things like: Oh, it is so horrific that these women are trashing his reputation.

Are you really telling me that for a woman to share a horrific experience from her life, who is willing to have the FBI investigate it and who provides people who have corroborating information, you are calling that an attack? You are calling that person the wrong person? How dare they come forward with their story, you are saying. That is just wrong. That is so completely wrong to treat women in that fashion.

So to my colleagues who want somebody of a similar judicial perspective, you will have a chance to have that person, but you will do incredible harm to this institution if this man, after this record, is put onto the Court, and that is why he needs to be rejected.

That is why the President should withdraw him. That is why my Republican colleagues should call up the President and say: Withdraw this nominee and send us another.

I happen to disagree with his judicial philosophy as well. We are in a battle in this country between the ''we the people'' vision of the Constitution, as it was written, and a rewrite done by a group of lawyers who want to have government not by and for the people but by and for the powerful: Don't worry about those consumers. Let the company run over the top of them. Don't worry about those healthcare opportunities. Snatch them away. Don't worry about those environmental laws. Knock them down.

It is government by and for the powerful. That is Kavanaugh. Kavanaugh has gone through decades of a process designed to prepare him to execute that philosophy—government by and for the powerful on the Court. They are so happy. The powerful in this country are so happy to jam him through that they are putting extreme pressure on my colleagues to approve him despite his horrific personal record.

I say to my colleagues: Stand up for the integrity of the Senate. Stand up for the legitimacy of the Supreme Court. Don't allow yourselves to be brought into a vortex of determined outside power saying: This must be done, and this must be done now, and this must be done with this flawed individual.

I am deeply disturbed—deeply disturbed—about where we stand right now with the vote to close debate tomorrow and to send this body into 30 hours of final debate before a decision. That timeline gives us no chance that the courts can provide us the documents that have been censored by the President of the United States. It gives no chance to reawaken the opportunity of the committee to hear from those 28 individuals whom the FBI did not investigate because the President of the United States wouldn't let them—no chance to get to true justice.

Remember that phrase across the front of the Supreme Court: ''Equal justice under law.'' That phrase will be tarnished, the Court deeply diminished, and the people deeply divided, if we proceed to the confirmation of Brett Kavanaugh.

Thank you, Mr. President.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. BENNET. Mr. President, the nomination of Judge Kavanaugh by Donald Trump has left this body and the American people deeply divided, but I think it has also united every American in the belief that this cannot be the standard for how the Senate or the Federal Government should operate. This cannot be how our Founders expected us to consider lifetime appointments to the Supreme Court of the United States.

As recently as when I was in law school, confirmations of a Supreme Court Justice used to be a chance for the American people to learn about our system of checks and balances and the rule of law—what made America so special. No student in Colorado watching our conduct over the past few weeks would have anything to be proud of. Instead of modeling our checks and balances, we have been demolishing them. Somewhere along the way, we began to treat the courts as just another front of our endless partisan war, with each vacancy as an opportunity to bloody the other side and secure an ephemeral political win. And the latest, lowest point in that story is this shambles of a confirmation process.

Weeks ago, I announced that I intended to oppose Judge Kavanaugh's nomination. It was after the first round of hearings and before the later allegations of misconduct arose. Then and now, I worried about what his confirmation would mean to the people of Colorado—for those with preexisting conditions who depend on the Affordable Care Act for lifesaving treatment, for our farmers and ranchers who are so worried about climate change, for our children with asthma who are vulnerable to harmful pollutants, for same-sex couples in loving marriages, and for the women across our State who have a constitutional right to make their own healthcare decisions.

I worried that Judge Kavanaugh would threaten hard-won progress for all Coloradans, taking us from the independent majority under Justice Kennedy to an ideological majority, deeply out of step with the values of

people in my State and, I would say, throughout the United States.

I worried that Judge Kavanaugh would block reforms we need to break the fever gripping our politics—a fever on full display over the last few weeks. If confirmed, it is very likely that Judge Kavanaugh would provide a fifth vote against reforms to end partisan gerrymandering, to help workers organize, to help people vote and curb the corrupting power of money in our politics.

In the age of President Trump, I have particular concerns about the nominee's expansive views with respect to Presidential power and oversight, views that made me question the extent to which he would fulfill the Court's role as a check on the executive branch.

Finally, I had concerns that Judge Kavanaugh had an unusually partisan background for a judicial nominee—a concern borne out during the hearing last week.

All of this led me to oppose Judge Kavanaugh's nomination.

Soon after, Dr. Ford came forward with these serious allegations of misconduct. She came before the Senate Judiciary Committee and gave very credible testimony. She had no reason to make anything up, and she had every reason to stay quiet, but she came forward anyway because she believed, as she said, it was her civic duty. Her courage has inspired hundreds of thousands, if not millions, of women across the country, including Debbie Ramirez of Colorado, to share their own stories. She inspired other survivors from my State to call, write, and even fly to Washington and meet with me earlier today.

For her courage alone, Dr. Ford deserved far better than the casual dismissal we saw from Members of this body or the juvenile taunting we saw the other night by President Trump, who continues the same politics of distraction and division that managed to get him elected and that continue now to threaten to tear our country apart.

But President Trump is not the issue here. For all the damage he has done, he is not the cause of our dysfunction. He is a symptom of it, and that dysfunction is what we have to confront, especially now as we find ourselves days away from a party-line vote for a lifetime appointment to the Supreme Court.

I recognize that both sides had their own argument or story about how we got to this point. I know that ever since the majority demolished the rule requiring 60 votes for a Supreme Court nominee, there has been no incentive to select a mainstream candidate who can earn the support of both parties. In fact, all the incentives now run in exactly the opposite direction—selecting a nominee who can appease the base of the party and earn the narrowest partisan majority in the Senate. That reality helps to explain why this process has been so divisive.

If we still had the 60-vote threshold, it is hard to imagine the Senate moving forward on a nominee without disclosing their full record and without giving the minority party time to review that record so they can ask informed questions of the nominee. That would never happen if you still needed 60 votes, if you still needed the other party as part of the decision making, as part of advise and consent.

We would expect the nominee to have to answer directly direct questions. It would have been unfathomable that the majority would downplay serious allegations of misconduct, and, in the case of Debbie Ramirez, refuse to even interview many of the potential witnesses that she identified.

None of this makes any sense if our interest is in protecting the integrity of the Supreme Court. It only makes sense if we have now reduced our responsibility and our duty under the Constitution to advise and consent to a completely partisan exercise. That is where we have gotten to.

I have said on this floor before that I deeply regret the vote we took to change the rules for lower level officials and judges. I don't think we should have done that.

I certainly don't think the majority leader should have prevented Merrick Garland from coming to a vote on the floor of the Senate. That was outrageous, unprecedented in our history. I don't think he should have invoked the nuclear option for the Supreme Court. I think that was a huge mistake.

We are going to have a partisan process forever unless we can find some way back there. This new majority rule when it comes to judicial nominees is why we now have Supreme Court nominees audition on cable television networks—in this case, FOX News. It is why the President held a political rally and used it as an occasion to mock the accusers. It is why the White House limited the investigation to ignore key witnesses, allowing the majority leader to declare, as he did this morning, that it uncovered ''no backup from any witnesses.'' Well, they weren't interviewed.

It is important to remember what the majority leader did to Judge Garland when Justice Scalia died. He left open a vacancy on the Supreme Court for more than 400 days, and we can't take the time to interview witnesses from a serious allegation from somebody living in Boulder, CO? I forget exactly how many days it was, but it was more than 400 days. Then we have a 4-day investigation that doesn't interview the witnesses that have been named, and the majority leader has the gall to come to the floor and say that the investigation had uncovered ''no backup from any witnesses.''

All of this—most importantly, that lack of investigation—is evidence of a confirmation process that has been overrun by politics, like everything else around here. Only, unlike many other things, this is a solemn responsibility granted to this body exclusively by the Constitution of the United States, by the Founders who wrote that Constitution, and the Americans who ratified it.

This may help one party win Presidential or Senate elections, but it is toxic to our institutions. We have exported what hopefully will be the temporary, mindless, empty, counterproductive, unimaginative, meaningless partisanship from the floor of this Senate to the U.S. Supreme Court. We should be ashamed of that. We should be ashamed of that on the floor of this Senate, and we should be ashamed that we are doing that to an independent branch of our government.

Earlier today, I had the chance to meet students who were visiting here from Aspen, CO. When I meet with students, I sometimes get the impression they think that all of this was just here—that the Capitol was here, that the Supreme Court was here, that the White House was just here, that somehow it all just fell from the sky. I always remind them that it wasn't just here.

The only reason we have any of this is because previous generations of Americans overcame enormous difficulty to write and ratify the Constitution. We forget that Americans were sharply divided over whether to ratify the Constitution. Some worried that the new government would grow too powerful and become the very tyranny they had just fought a war to escape.

By the way, think about that for a second—that generation of Americans accomplished two things that had never been done in human history before. They led an armed insurrection that was successful against a colonial empire, and they wrote a Constitution that was ratified by a people who would live under it. No humans had ever been asked permission for the form of government they would live under until Americans got that opportunity. We set an example for the world.

It also must be said that the same Founders perpetuated human slavery, which is a terrible stain on their work, but another generation of Americans, who I think of as Founders, just like the people who wrote the Constitution, abolished slavery. They made sure women had the right to vote and passed the civil rights laws in the 1960s. Generation after generation after generation of Americans has seen their responsibility to democratize the Republic that the Founders created and to preserve the institutions that we created so that we could render thoughtful decisions in our Republic.

Our process for advice and consent looks nothing like that heritage. When Americans were having that big division about whether to ratify the Constitution at all, Alexander Hamilton wandered into the debate, and he responded to those who were worried

that the government would become too powerful or become a tyranny just like the one they had escaped. He pointed out the importance of the courts and the rule of law as a check against tyranny. He wrote that ''the complete independence of the courts of justice is peculiarly essential in a limited constitution.'' ''Without this,'' he said, ''all the reservations of particular rights or privileges would amount to nothing.''

Hamilton did not say that independent courts were optional. He did not say they were contingent on political convenience. He said they were essential to the working of this Republic, and it is for this reason the Founders designed the extraordinary mechanism of checks and balances, including the unique duties we bear in the U.S. Senate.

Yet the Founders also knew that this mechanism alone was insufficient. It required elected officials to act responsibly—to treat advice and consent, for example, as an opportunity to confirm judges of the highest intellect, integrity, and independence, judges who could maintain the confidence of the American people in our courts and rule of law. Today, we have fallen so short of Hamilton's standard. Instead of insulating the courts from partisanship, we have infected the courts with partisanship.

I have not met a single Coloradan who believes that confirming judges with 51 Republicans or 51 Democrats instead of 90 votes from both parties serves the independence of our judiciary. It does the opposite in that it makes the courts an extension of our partisanship. This is exactly what Hamilton feared. He warned: ''Liberty can have nothing to fear from the judiciary alone, but would have everything to fear from its union with either of the other departments.''

Hamilton's warning echoes loudly in the age of President Trump—a man who has called for jailing his political opponents, deporting immigrants without due process, banning entire religious groups, bringing back torture ''and a hell of a lot worse''; a man who fired the FBI Director in the middle of an investigation into his campaign and who has tried to discredit that investigation with routine falsehoods ever since.

If there were ever a time to stand up for our checks and balances and the rule of law, it is now. Instead, with this vote, the Senate is, once again, acceding to the White House and undermining the Supreme Court in the process. The result is that we are going to continue to barrel down this dangerous path.

Unless we change what we are doing, one of two things will happen: We will replay this process every time, that of confirming Supreme Court Justices with the barest partisan majority and tearing the country apart in the process, or if the Senate and the White House are not of the same party, we will never fill a Supreme Court vacancy. That is not what the Founders expected. It is certainly not what the people of Colorado expect.

We are playing with fire. Unlike us, the Founders knew their history. They knew about the fall of Athens, whose history taught them that, more than anything, the greatest threat to freedom is faction. The Founders read the Athenian historian Thucydides, who tells us about a civil war that consumed the city of Corcyra 2,400 years ago.

According to Thucydides, the city descended into factionalism. Both parties spared ''no means in their struggles for ascendancy. . . . In their acts of vengeance, they went to even greater lengths, not stopping at what justice or the good of the state demanded, but making the party caprice of the moment their only standard.'' As the civil war intensified, both sides struggled to end it because ''there was neither promise to be depended upon, nor oath that could command respect; but all parties dwelling rather in their calculations upon the hopelessness of a permanent state of things, were more intent upon self-defense than capable of confidence.''

How familiar that sounds today. In our acts of vengeance, we have gone to greater and greater lengths and fallen to greater and greater depths. We have ignored what justice or the good of the state demands. In doing so, we have degraded the courts as we have degraded ourselves.

Yet this is a human enterprise, just as it has been since the founding of the United States of America. Yet our situation is not hopeless. This dysfunction does not need to be a permanent state of things. We can and we must be capable of confidence in ourselves and our institutions once more, for unlike the stories told of ancient kingdoms and empires in history, we still live in a republic, and in the story of our Republic, we alone are responsible for writing its ending or its continuance for the next 100 or 200 years.

I think every American is probably disturbed by what has happened, and they all know we can create a better ending. The question they have is whether their elected Representatives in Washington will do so. We need an ending that upholds the independence of our courts, where we return to an honorable bipartisan tradition in the Senate, where we build a culture that has no place for sexual assault and that provides an opportunity for people who have been assaulted to be heard and to be heard in a way that doesn't shame them or embarrass them or make their difficulties even worse.

I know there are a lot of people out there—and I agree with them—who don't see a lot of hope for that in the process that we have had here. What I would say to them is that, tonight, there are survivors from all over our country, including from my home State of Colorado, who are arrayed around the Capitol. Their being here testifies to the resilience of the human spirit. It gives us all hope that however difficult this moment in the United States, progress is always in our hands, that it is always our responsibility, and that we need to act with the kind of courage they are showing tonight by being here.

I say thank you to the Presiding Officer, and I thank my colleague from Ohio for his indulgence. I have gone over about 5 minutes. I apologize for that.

I yield the floor.

The PRESIDING OFFICER (Mr. DAINES). The Senator from Ohio.

Mr. PORTMAN. Mr. President, I rise to talk about my vote on the confirmation of Judge Brett Kavanaugh to serve on the Supreme Court.

Sadly, over the past couple of weeks, the confirmation process has become a bitter partisan fight that has deeply divided this body and has divided our country in the midst of all the passion, the anger, and the emotion from both sides. Now I want to talk about something else. I want to talk about the facts. I want to talk about the facts as I know them.

First, I know Brett Kavanaugh. I have known Brett and his wife Ashley for more than 15 years since we worked together in the George W. Bush White House. I have seen them in tough situations. I have seen them tested. I have seen their character. I have known Brett not so much as a legal scholar or a judge or a professor but as a colleague and a friend and a father and a husband. I have known him as someone who is smart, thoughtful, and compassionate.

Among White House colleagues, I know that he is universally viewed that way. He was at the time, and he still is today as we have seen from the testimony of so many men and women who have worked with him. I also know that Brett Kavanaugh has been a widely respected public servant for nearly three decades, including the last 12 years as a judge on the DC Circuit Court—what most view as the second highest court in the land.

I know he has received praise from his fellow judges and his many law clerks, the majority of whom have been women, and from the students in his classes of Harvard, Yale, and Georgetown Law Schools—students from across the political spectrum—also from litigants who have been before him, including Lisa Blatt, who is a self-described liberal who has argued more cases before the Supreme Court than any other woman. When Lisa Blatt joined Condoleezza Rice and me in introducing Brett Kavanaugh before the committee, she said, ''He is unquestionably qualified by his extraordinary intellect, experience, and temperament.'' All of this seems to have been lost in the past couple of weeks.

I also know that Brett Kavanaugh is highly qualified to serve on the Supreme Court. In fact, frankly, I have

heard that from a number of my Democratic colleagues who were quick to say they don't support him for other reasons, but they don't question his legal experience and his qualifications. You really can't.

The American Bar Association, not known for being very friendly to Conservatives, has given Brett Kavanaugh its highest rating unanimously. I know that in more than 20 hours of testimony before the Judiciary Committee—in fact, I think it was 32 hours of testimony—he showed an encyclopedic knowledge of the Constitution, of Supreme Court cases, an appreciation for Supreme Court precedent, and, overall, has an impressive grasp of the law.

Only a couple of weeks ago, he had successfully navigated the arduous process of meetings, interviews, and tough questions during 32 hours in front of the Senate Judiciary Committee. As a result, he had the votes in the committee, and he seemed to be headed toward confirmation here on the floor of the Senate. After 12 weeks of consideration and 5 days of hearings—by the way, more days of consideration and more days of hearings than we have had for any confirmation of any judge for the Supreme Court in recent history—the committee was ready to vote. Just before the vote in committee came the allegations of sexual assault and calls for delay.

As wrong as it was for Members of the U.S. Senate to have kept the allegations of Dr. Ford's secret until after the normal process had been completed and then to have sprung it on the committee, the Senate, and the country, I thought that because of the seriousness of the allegations, it would also have been wrong not to have taken a pause and to have heard from Dr. Ford and Judge Kavanaugh, and we did. Chairman CHUCK GRASSLEY, of the Judiciary Committee, was accused by someone on my side of the aisle of bending over backward when he should have pushed ahead, but he reopened the process and allowed the painful ordeal to play out as, I think, we were compelled to do—painful for Dr. Ford, painful for Brett Kavanaugh, the Senate, and the country.

I believe sexual assault is a serious problem in our Nation, and many women and girls—survivors, victims—choose not to come forward, choose not to report it for understandable reasons. Therefore, I think we should take allegations seriously. We must take allegations of sexual assault very seriously, and I do. Dr. Ford deserved the opportunity to tell her story and be heard, and, of course, Judge Kavanaugh deserved the opportunity to defend himself. That is why I supported not only having the additional committee investigation and hearing but also of taking another week to have a supplemental FBI investigation after the normal Judiciary Committee process was completed. I watched that additional Judiciary Committee hearing, and I listened carefully to both Dr. Ford's and Judge Kavanaugh's testimony. I am sure many Americans did.

I have now been briefed on it and have read the supplemental FBI report, which arrived early this morning. I went to a secure room here in the Capitol. To do so, I went three times today to be sure I could be fully briefed on it and could read it. Again, my job, my obligation, is to assess the facts, and the facts before us are that no corroboration exists regarding the allegations. No evidence prepared before or in the supplemental FBI investigation corroborates the allegations—none.

Judge Kavanaugh, of course, has adamantly denied the allegations. His testimony is supported by multiple other statements. Simply put, based on the hearings, the Judiciary Committee's investigation, and the FBI's supplemental investigation, there is no evidence to support the serious allegations against Judge Kavanaugh. Of course, in his 25 years of public service, there had also been six previous FBI investigations.

In America, there is a presumption of innocence. When there is no evidence to corroborate a charge, there is a presumption of innocence that we must be very careful to pay heed to.

Just 1 day after Dr. Ford's allegations were made public, 65 women who knew Judge Kavanaugh in high school sent a letter to the Judiciary Committee in defense of his character. These 65 women put this letter together within a day's notice.

The letter stated:

> Through the more than 35 years we have known him, Brett has stood out for his friendship, character, and integrity. In particular, he has always treated women with decency and respect. That was when he was in high school, and it has remained true to this day.

These are women who knew Brett Kavanaugh. They knew him in high school. Importantly, that is the Brett Kavanaugh I have known these past 15 to 20 years.

This confirmation debate could have and should have unfolded very differently. The process has become poisonous, and it is up to us in this Chamber to change it.

It is going to take a while for the Senate and the country to heal from this ugly ordeal, but for now let me make a modest suggestion. Let's step back from the brink. Let's listen to each other. Let's argue passionately, but let's lower the volume. Let's treat disagreements like disagreements, not as proof that our opponents are bad people. Let's see if we can glorify quiet cooperation—at least every once in a while—instead of loud confrontation.

Some may say this is trite or naive, but, my colleagues, we have crossed all these lines in recent weeks. For the state of this institution and for the country, we have to step back from the brink, and we have to do better.

The way this process unfolded risks candidates with the kinds of qualifications and character we all want deciding to think twice before entering public service. If the new normal is eleventh-hour accusations, toxic rhetoric like calling a candidate ''evil'' and those who support him ''complicit in evil'' and guilt without any corroborating evidence, who would choose to go through that? How many good public servants have we already possibly turned away by this display? How many more will we turn away if we let uncorroborated allegations tarnish the career of a person who has dedicated 25 of the past 28 years to public service and who has done so with honor, again based on the testimony of so many people across the spectrum, men and women?

These are questions the Senate is going to have to grapple with for possibly years to come, but right now I want to focus on something that hasn't gotten as much attention in the last couple of weeks, and that is what is known.

I know Judge Kavanaugh as someone with a deserved reputation as a fair, smart, and independent judge. I know him as someone who is universally praised by his colleagues for his work ethic, his intelligence, and his integrity. I know him as someone who respects everyone and someone whose first introduction to law came from listening to his mom practicing closing arguments at the dinner table. Perhaps most importantly—most importantly—I know him as someone who has the ability to listen. It is something we need more of in this country and on the Court during turbulent times.

In following facts, as I am obligated to do, I will support this nomination, and I will be proud to vote to confirm Brett Kavanaugh as the next Associate Justice of the Supreme Court.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The senior assistant legislative clerk proceeded to call the roll.

Mr. PORTMAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

MEASURE PLACED ON THE CALENDAR—S. 3532

Mr. PORTMAN. Mr. President, I understand, there is a bill at the desk that is due for a second reading.

The PRESIDING OFFICER. The Senator is correct.

The clerk will read the bill by title for the second time.

The senior assistant legislative clerk read as follows:

> A bill (S. 3532) to authorize the United States Postal Service to provide certain nonpostal property, products, and services on behalf of State, local, and tribal governments.

Mr. PORTMAN. Mr. President, in order to place the bill on the calendar under the provisions of rule XIV, I object to further proceedings.